



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 684

IN THE MATTER
OF
EDWARD FELIX

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Edward Felix pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, § 4(j).

On June 11, 2002, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Felix. The Commission has concluded its inquiry and, on March 12, 2003, found reasonable cause to believe that Felix violated G.L. c. 268A, § 23(b)(2).

The Commission and Felix now agree to the following findings of fact and conclusions of law:

-Findings of Fact-

1. Edward Felix has been the Saugus police chief since 1996. The chief is appointed by the town manager.
2. Steven Angelo ("the Town Manager") was the Saugus town manager from July 1998 to August 2002.
3. Michael Kelleher ("the Selectman") has been a Saugus selectman since 1999. The selectmen appoint the town manager. Kelleher and Angelo are friends.
4. On the evening of January 3, 2002, the Selectman, the Town Manager and others socialized at a Saugus restaurant beginning at around 9 P.M. Later in the evening, the parties went to a Saugus club where they stayed until just before midnight.
5. At that time, the Town Manager went home. The Selectman drove to another Saugus club.
6. The Selectman drank alcoholic beverages at each of the above establishments.

7. At approximately 1:45 A.M., the Selectman left the club and drove towards his home.

8. At approximately 2:00 A.M., two Saugus police officers on patrol observed the Selectman's car drift over the center line and then back to his side of the road. They pulled the car over.

9. After being pulled over, the Selectman used his cell phone to call the Town Manager to inform him that the police had stopped him.

10. The police officers promptly approached the Selectman's car and informed him of the reason for the stop. When the officers observed the Selectman close up, his voice was slurred, his eyes were red, and he and his vehicle smelled of alcohol. The officers suspected the Selectman was intoxicated. The officers asked the Selectman if he had been drinking, to which the Selectman responded that he drank a couple of beers. Based on their observations, the officers intended to perform a field sobriety test on the Selectman, which was standard police procedure.

11. The officers requested the Selectman's driver's license. His license, which he gave them, had been expired for over a year. In accordance with standard operating procedures, the officers returned to the cruiser and called in the information.

12. According to the Selectman, he called the Town Manager because he was concerned that he, the Selectman, was being or was about to be harassed by the police because he had supported the Town Manager in a long-standing bitter contract negotiation with the police union.

13. According to the Town Manager, the Selectman told the Town Manager that he did not believe he had been legitimately stopped. The Town Manager advised the Selectman to contact Chief Felix. The Selectman stated that he did not have the Chief's telephone number and asked the Town Manager to call the Chief instead. The Town Manager agreed.

14. The Town Manager then called Felix at home. According to the Town Manager, he told Felix that the Selectman had been stopped by the police and was concerned he was being harassed. The Town Manager asked Felix to call the Selectman in his car at the scene. According to the Town Manager and Felix, all the Town Manager did was ask Felix to check into the matter. Felix told the Town Manager he would call him back to report on what happened.

15. Felix telephoned the Selectman at the scene and spoke with him briefly. Felix then telephoned the lieutenant on duty at the station and instructed the lieutenant to have the officers drive the Selectman home. Felix was aware when he gave this instruction that the Selectman had been drinking and may have been driving under the influence and had given the officers a license that had expired over a year ago. The lieutenant called the officers at the scene and conveyed Felix's message to drive the

Selectman home, but also said that he would support the officers if they decided to arrest the Selectman.

16. After his call to the station, Felix had an additional telephone conversation with the Selectman. Felix then spoke to the officers. They informed him that, in their opinion, the Selectman had been driving under the influence and should be given a field sobriety test. Nevertheless, Felix asked them to simply drive the Selectman home.

17. At that point the two patrol officers drove the Selectman home.

18. Felix then telephoned the Town Manager and told him that the officers drove the Selectman home.

19. The two patrol officers and sergeant at the scene believed that the Selectman was intoxicated and but for Felix's intervention, a field sobriety test would have been administered per standard operating procedure. They also believed that the Selectman would have been arrested for operating a motor vehicle under the influence of alcohol ("OUI"). According to standard police procedures, the Selectman also would have been issued citations for not staying within his own lane and driving with an expired license.

20. Citations for failing to stay within one's own lane and driving with an expired license carry \$100 and \$50 fines, respectively. The potential costs of a first-time OUI conviction include \$575 in court fines and costs, loss of license for 45 days and significant insurance surcharges.

-Conclusions of Law-

21. Section 23(b)(2) prohibits a municipal employee from knowingly or with reason to know using his position to obtain for himself or others unwarranted privileges or exemptions of substantial value not properly available to similarly situated individuals.

22. As the police chief, Felix is a municipal employee as that term is defined in G.L. c. 268A, § 1.

23. Being driven home without taking a field sobriety test that may have led to an arrest, and, not receiving citations for driving over the center line and driving with an expired license were unwarranted privileges or exemptions for the Selectman. Standard operating procedure would have required that the Selectman be subjected to a field sobriety test, which, in the opinions of the officers on the scene, would have resulted in his arrest. He also should have been cited for not staying in his own lane and driving with an expired license.

24. These privileges or exemptions were of substantial value as each involved fines of \$50 or more. Avoiding a field sobriety test that may have resulted in an OUI arrest was of substantial value because the likely costs were considerable, including large fines and court costs, loss of license for 45 days and significant insurance

surcharges. These unwarranted privileges or exemptions were not otherwise properly available to similarly situated people.

25. Felix used his official position as police chief to secure these unwarranted privileges or exemptions for the Selectman by requesting as chief that his officers on the scene drive the Selectman home.

26. Therefore, by knowingly or with reason to know using his position as police chief to secure for the Selectman these unwarranted privileges or exemptions of substantial value not properly available to similarly situated individuals, Felix violated §23(b)(2).

-Resolution-

In view of the foregoing violation of G.L. c. 268A by Felix, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Felix:

(1) that Felix pay to the Commission the sum of \$2,000 as a civil penalty for violating G.L. c. 268A, §23(b)(2); and¹

(2) that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: June 25, 2003

¹In connection with this same matter, Selectman Kelleher has also entered into a disposition agreement and former Town Manager Angelo has agreed to a public education letter.